

REMARKS

This application is a Divisional of U. S. Application Serial No. 10/272,382 having been restricted out by a restriction requirement from the parent case. Claims 1 and 2 have been limited to nutritional supplementation at 1:1 neutral complexes. Bases for this limitation is provided in the specification at for example page 7 pointing out that 1:2 complexes do not work and that 1:1 complexes are those formed in the present invention. Additionally these complexes are formed in the presence of basic pH, not acid pH. They a combination with a di-carboxylic  $\alpha$ -amino acid. Amino acid ligand serves a dual role as a bidentate ligand that forms the 1:1 complex with metal ion and they act as the counter ion to balance the charge on the cationic complex of the metal and amino acid-carboxyl moiety.

Claims 1 and 2 were rejected as anticipated by Ender. To the extent the Examiner chooses to apply Ender to claims limited to the 1:1 complexes, the rejection is traversed. Ender mentions a mink feed additive that is "the chelate- or complex-forming compound is preferably an amino acid, particularly glutamic acid and/or asparagine acid and/or histidine form "an organic iron complex". The mention is made of the structure of the complex and in fact at column 2 it says at line 54-55 "in order to achieve the best effect, the pH value of the food should be fairly low." pH is such as those mentioned at column 2 and column 3 specifically "down to 2.5" would not form 1:1 complexes to require a basic environment. Thus the claims are not anticipated, the structures prepared are different and there is simply no suggestion of the utility of Applicants' method.

With respect to Kirschner U. S. Patent No. 6,352,713, the Examiner has rejected claims 1 and 2 as obvious over Kirschner. The rejection is traversed. Kirschner relates to prenatal supplementation to pregnant women of iron. Kirschner merely mentions the complex

composition of many materials, including, vitamin C, folic acid, calcium ascorbate, iron vitamin B6, and many other vitamins, etc. It roughly describes a pH "of at least 5.5 (see every single example). While it does indicate in the specification that the pH may range from about 5.5 to about 9.5 there is no indication what the pH was in the example. Therefore, there is no way to tell what in fact was formed. In this sense, the law is clear that ambiguous references cannot anticipate or make an invention obvious. Moreover, again, there is simply no teaching of the methodology of the invention or the utility of the method.

With respect to 35 U.S.C. § 112 objection on the basis that a "small but effective amount is indefinite", Applicants remind the Examiner that it has long been the law. Small but effective amount is adequate and not indefinite. *In re Halleck*, 164 U.S.P.Q. 647 (CCPA 1970); *In re Fredericksen et al.*, 102 U.S.P.Q. 35 (CCPA 1954); *In re Watson*, 186 U.S.P.Q. 11 (CCPA 1975). Holding there is nothing indefinite about saying an effective amount of stated function is specified to be achieved.

In summary, it is submitted that the Amendments here presented make claims 1 and 2 *prima facie* allowable. For the record, since the parent case is being examined by a different Examiner, Karl Puttlitz, Applicants file a copy of an amendment and a Rule 132 Declaration filed in the parent case. It is presumed this Examiner is aware of this filing but in the off side chance this is not so, a copy is provided for convenience.

A one-month Extension of Time (October 22, 2004 to November 22, 2004) in the amount of \$55.00 was filed October 22, 2004. Therefore, no additional fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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